

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

RAYMOND TIBBETTS,

Petitioner,

: Case No. 1:14-cv-602

- vs -

District Judge Susan J. Dlott
Magistrate Judge Michael R. Merz

WARDEN, Chillicothe
Correctional Institution,

:
Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATIONS AND
SUPPLEMENTAL REPORT AND RECOMMENDATIONS**

This capital habeas corpus case is before the Court on Respondent's Objections (Doc. No. 13) to the Magistrate Judge's Report and Recommendations (Doc. No. 11) and to the Supplemental Report and Recommendations (Doc. No. 17).

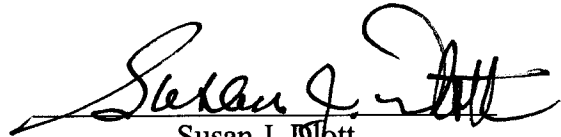
This is Raymond Tibbetts second-in-time habeas corpus petition seeking relief from his conviction for aggravated murder and sentence of death. This Court denied relief on the first petition and that denial was affirmed. *Tibbetts v. Bradshaw*, 2006 U.S. Dist. LEXIS 13881 (S.D. Ohio Mar. 29, 2006), *aff'd*, 633 F.3d 436 (6th Cir. 2011), *cert. denied sub nom. Tibbetts v. Bobby*, 132 S.Ct. 238 (2011). The Warden seeks dismissal of the instant Petition on the ground that it requires certification from the Sixth Circuit under 28 U.S.C. § 2244 before it can proceed because it is a second-or-successive petition within the meaning of that statute (Motion, Doc. No. 7).

Pursuant to Fed. R. Civ. P. 72(b)(3), the Court has reviewed *de novo* the Magistrate Judge's recommendations in the Report and Supplemental Report. Having done so, the Court

finds that they are not erroneous. Every judge of this Court to consider the question has found that a habeas corpus petition challenging a “new” lethal injection protocol for carrying out the sentence of death is not a second or successive petition and may therefore proceed in this Court without advance certification under 28 U.S.C. § 2244. See Response to Motion to Dismiss, Doc. No. 8, PageID 110, *citing Raglin v. Mitchell*, No. 1:00-cv-767, 2013 U.S. Dist. LEXIS 141199, at 94 (S.D. Ohio Sep. 29, 2013)(Barrett, J.); *Smith v. Pineda*, No. 1:12-cv-196, 2012 U.S. Dist. LEXIS 121019, at 13-14 (S.D. Ohio Aug. 27, 2012) (Merz, M.J.), *supplemented by* 2012 U.S. Dist. LEXIS 154037, at 2-4 (S.D. Ohio Oct. 26, 2012), *then adopted by* 2012 U.S. Dist. LEXIS 171759, at 2 (S.D. Ohio Dec. 4, 2012) (Rose, J.); *Chinn v. Bradshaw*, No. 3:02-cv-512, 2012 U.S. Dist. LEXIS 93083, at 8-9 (S.D. Ohio July 5, 2012) (Sargus, J.) Furthermore, the judges of this Court have continued to hold that Ohio’s lethal injection protocol may be attacked in habeas corpus, following *Adams v. Bradshaw*, 644 F.3d 481 (6th Cir. 2011), and concluding *Scott v. Houk*, 760 F.3d 497 (6th Cir. 2014), does not overrule *Adams*.

Accordingly, the Report and Recommendations and the Supplemental Report and Recommendations are ADOPTED and the Warden’s Motion to Dismiss (Doc. No. 7) is DENIED. The Warden’s alternative motion to transfer this case to the Sixth Circuit (Doc. No. 7) is DENIED.

March 5, 2015.


Susan J. Blott
United States District Judge